

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

SIYAD WARSAME ALI,

Defendant.

CASE NO. 8:07CR443

TENTATIVE FINDINGS

The Court has received the Revised Modified Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 123). The government adopted the PSR (Filing No. 111). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the following paragraphs of the PSR: ¶ 19 (amount of loss); ¶ 23 (obstruction of justice); ¶ 28 (sentence imposed for a prior conviction); ¶ 36 (background information from Pretrial Services Report).

¶ 19 - Amount of Loss

The Defendant objects to the loss amount. The objection will be heard at sentencing, and the government has the burden by a preponderance of the evidence.

¶ 23 - Obstruction of Justice

The Defendant objects to the 2-level upward adjustment for obstruction of justice. The objection will be heard at sentencing, and the Defendant has the burden by a preponderance of the evidence.

¶ 28 - Sentence Imposed for Prior Conviction

The Defendant objects to the statement that he was sentenced to 15 days in jail on the prior conviction listed in ¶ 28. The Defendant remembers being sentenced to a \$50 fine and no jail time.

The objection is denied. The information recalled by the Defendant, if correct, does not change the sentencing guideline calculation. The Defendant has received no criminal history points for this offense. Moreover, the information might be available in the probation officer's records. Any such available information should be sought before filing objections.

¶ 36 - Information from Pretrial Services Report

The Defendant objects to information in background information stated ¶ 36 and attributed to the Pretrial Services Report. The objections are denied, as the information does not affect the sentencing guideline calculation, and the Court is not at liberty to change the Pretrial Services Report.

IT IS ORDERED:

1. The Defendant's objections to ¶ 19 (loss amount) and ¶ 23 (obstruction of justice) in the PSR will be heard at sentencing;
2. Otherwise, the Defendant's objections to the PSR are denied;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 14th day of September, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge